

COUNSELING SAME SEX COUPLES IN A POST-DOMA AMERICA

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	Recognizes Same Sex Marriage	Recognizes Same Sex Marriages From Other States	Prenuptial Agreements Upheld	Tenancy by the Entirety Allowed for Same Sex Couples	Prohibits Workplace Discrimination due to Sexual Orientation	Spouse Has Rights to Homestead	Permits Joint Adoption
California	Yes	Yes	Yes	No	Yes	Yes	Yes
Florida	No	No	No	No	No	No	No ¹
Nevada	No	No	No	No	Yes	Yes ²	Yes
North Carolina	No	No	No	No	No	No	No
Texas	No	No	No	No	No	No	No
New Jersey	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New York	Yes	Yes	Yes	Yes	No	Yes	Yes

From Pope Francis’ comment that the Catholic Church should not interfere in the lives of gays to the U.S. Supreme Court’s *Windsor* and *Perry* decisions, 2013 has been a banner year for gay rights in America. While these decisions have tremendously expanded gay rights in the United States, the differences between state and federal laws still hold back the gay rights movement to some degree.

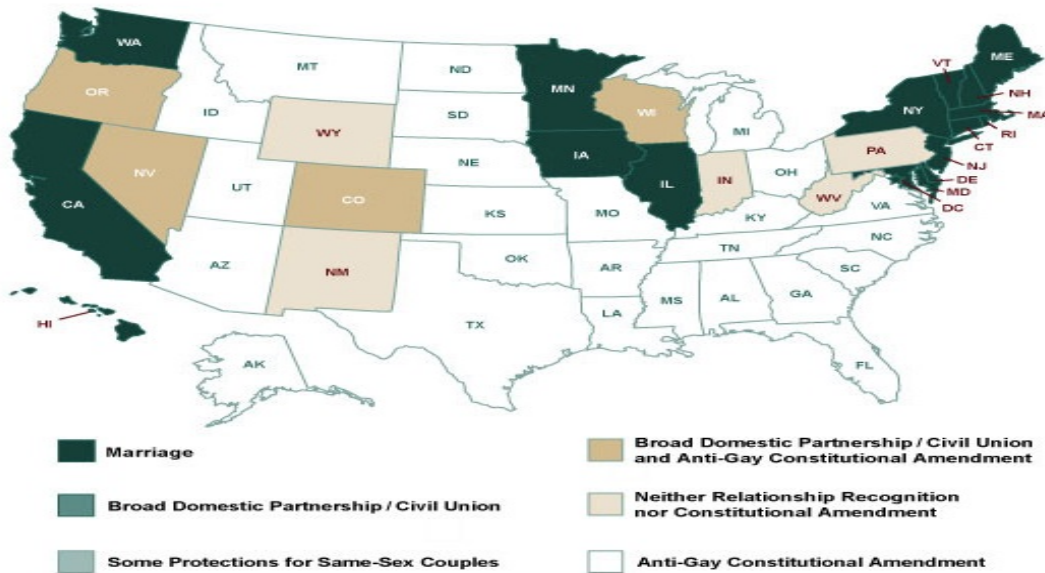
Individuals who are in same sex relationships must now determine whether they would like to be married, where to live, whether to have prenuptial agreements in place, how to handle beneficiary designations, whether they can adopt, and many other things. Thus, attorneys should prepare to start counseling their same sex clients with respect to their legal rights (or lack thereof) in various jurisdictions.³

¹ Florida’s Third District Court of Appeals ruled that a statute from 1997 which prohibited “homosexuals” from adopting was unconstitutional. *Florida Dept. of Children and Families v. Adoption of X.X.G.*, 45 So. 3d 79 (Fla. 3d Dist. App. 2010).

² Same sex couples will receive rights to homestead if registered with the state as domestic partners.

³ While there are some instances when joint representation of same sex couples is acceptable, it is always a good idea to suggest that one party retain separate legal representation. See your state

Winning the Freedom to Marry: Progress in the States



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Same Sex Marriage Throughout the United States

Fifteen countries (Argentina, Belgium, Brazil, Canada, Denmark, France, Iceland, Netherlands, New Zealand, Norway, Portugal Spain, South Africa, Sweden, and Uruguay) and some other country subdivision jurisdictions (i.e. portions of the United States and England) have ruled to recognize the validity of same sex marriages. Yet, there is still surprisingly over 76 countries where being gay or lesbian is a criminal offense, including many African and Asian countries.

While most Americans now would consider criminal sanction for engaging in same sex relationships a form of cruel and unusual punishment, it is important to remember that America has imposed just as much heartache, ridicule, and unwarranted punishment on gay individuals. For example, rock icon, Lou Reed, who recently died at age 71 from liver disease, was forced to have electroshock therapy during high school in an attempt by his parents to “cure” him of

Bar rules for applicable rules on client joint representation.

⁴ Freedom to Marry, *Winning the Freedom to Marry: Progress in the States*, www.freedomtomarry.org/states/ (October 21, 2013).

“homosexuality.” He wrote about this permanently scarring experience in the song “Kill Your Sons”:

“All your two-bit psychiatrists,
Are giving you electroshock.
They said they’d let you live at home with mom and dad,
Instead of mental hospitals.
But every time you tried to read a book,
You couldn’t get to page seventeen.
Cos you forgot where you were,
So you couldn’t even read.”

We will never know whether his premature death at age 71 was a direct or indirect result of this harrowing experience.

However, state by state America is taking steps to redress this past injustice and provide gay individuals the same rights other couples receive: the right to marry. As of November 2013, about 43% of the United States population lives in a state that has some sort of protection for same sex couples. Sixteen states recognize same sex marriage in the United States (Massachusetts, California, Connecticut, New York, Illinois, Iowa, Vermont, New Jersey, New Hampshire, Hawaii, Maryland, Maine, Washington, Delaware, Rhode Island, and Minnesota) along with the District of Columbia and certain Native American tribes. Nevada, Wisconsin, and Oregon have created a limited legal same sex marriage recognition while Colorado recognize civil unions⁵ for same sex couples.

Even though these steps are simply baby steps in the overall goal of sexual orientation equality, these legislative changes are providing same sex couples rights unrightfully denied to them before. The other 35 states either have a constitutional or statutory ban on same sex marriage. This becomes an issue when a same sex couple marries in a state allowing same sex marriage but then moves to a state that has an outright ban on same sex marriage.

In fact, some states that ban same sex couples from marrying, allow first cousins to marry. Below is a chart showing the states that allow first cousins to marry and whether those states allow for same sex marriage.

	Legal to Marry First Cousin	Legal to Marry Same Sex Partner	Minimum Age Minor Can Marry With Consent
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⁵The decision in *Windsor* made it clear that the federal government will not recognize civil union marriages. Thus, someone who has exercised their right in these states to enter a civil union or domestic partnership are in a state of limbo for federal rights. Helen Casale, Roundtable, *LGBT Litigator* (American Bar Association, Sept. 12, 2013) (copy of transcript on file with *Gassman and Associates*).

Alabama	Yes	No	16
Alaska	Yes	No	16
California	Yes	Yes	No Age Limit
Colorado	Yes	No	16
District of Columbia	Yes	Yes	No Age Limit
Florida	Yes	No	16
Georgia	Yes	No	16
Hawaii	Yes	Yes	16
Maryland	Yes	Yes	16
Massachusetts	Yes	Yes	Male: 14; Female: 12
New Jersey	Yes	Yes	16
New Mexico	Yes	No	16
New York	Yes	Yes	16
North Carolina	Yes	No	16
Rhode Island	Yes	No	Male: 18; Female: 16
South Carolina	Yes	No	16
Tennessee	Yes	No	16
Vermont	Yes	Yes	16
Virginia	Yes	No	16

Estate Planning and Tax Advantages

On Thursday, August 29, 2013, the IRS ruled that same sex couples will be considered as married for federal income, estate and gift tax purposes. Any same sex marriage legally entered into in one of the 16 states that allow same sex marriages, the District of Columbia, or a foreign jurisdiction having legal authority to sanction same sex marriages is covered under this ruling. This is notwithstanding whether the spouses live in a state or other jurisdiction that recognizes their marriage legally.

Before the IRS issued Revenue Ruling 2013-17, a same sex couple would not receive full married couple benefits under the estate and gift tax laws unless they were (1) married in a state that recognizes same sex marriages and (2) resided in a state that also recognizes same sex marriages.

The Revenue Ruling is consistent with the Supreme Court's decision in the *United States v. Windsor* case as discussed in Leimberg Newsletter #2123, which was entitled Many Affluent Same-Sex Couples Will Be Leaving Florida and Where They Should Go. This piece was premised upon the Court's decision that a same sex couple would not be considered married for tax purposes if the state where they resided did not recognize the marriage. That changed very quickly!

The rules and implication thereof were thoroughly explained by George Karibjanian in Steve Leimberg's Estate Planning Email Newsletter Archive Message #3137 that was published on September 3rd.

As the result of Rev. Ruling 2013-17, affluent married couples now have the option to move to states that may not recognize same sex marriage to avoid state inheritance taxes, state estate taxes, and state income taxes. For example, a same sex couple could go to New York to get married and move to Florida to avoid income taxes and inheritance taxes. Not to mention it is also a pretty neat place to live (when it is not 100 degrees outside with 100% humidity and the power is not working because of a lightning storm).

Revenue Ruling 2013-17 provides that Internal Revenue Code Section 6511 gives same sex married couples the option of amending their prior tax returns, going back three years from the time the return was filed or two years from the time the tax was paid, whichever is later. Same sex couples may also choose to leave the prior returns in tact or to amend one or more prior tax years. This gives same sex couples some very good choices for income tax planning purposes. Almost all affluent same sex couples (or couples where one spouse is affluent) will want to go to a good income tax advisor with the right software, to help determine what years they should amend and what years they should not amend.

Any gift tax return that involved a transfer to a spouse that used up any portion of the donor spouse's estate tax exemption should probably be amended to regain the exemption amount, unless there are other items on the gift tax return that are best not re-opened, such as large gifts with questionable values to non-spouse individuals.

Amending a gift tax return will give the IRS three years after the date of the amendment to revisit all aspects of the gift tax return amended.

An increase in federal protections also means that same sex couples residing in states that don't recognize same sex marriage will not be as negatively impacted by the state's lack of recognition of gay marriage. Rev. Ruling 2013-17 will largely benefit gays and lesbians who are serving in the military or working for the federal government. A spouse recognized by the military or federal government will receive benefits from the federal government, and state laws will not apply.

However, same sex couples should be mindful that some limitations still exist to the federal protections. For example, veteran benefits do not apply in the same way as benefits to active duty service members. If a same sex couple gets married in a recognition state and then moves to Florida,

it is unlikely that the Department of Veterans Affairs will recognize the marriage. But if a same sex couple lives in a recognition state when benefits take effect and later moves to a non-recognition state, then the VA will likely continue dispensing the benefits.

Same sex couples who are not formally married in one of the recognition states should consider whether the estate and gift tax and income tax advantages of getting married outweigh potential disadvantages.

The advantages can include;

- portability,
- disclaimers,
- gift-splitting,
- joint income tax returns,
- non-recognition of gain for interspousal transfers,
- jointly owned property rules,
- availability of basis step-up for all community property at the first spouse's death, and
- estate and gift tax marital deductions.⁶

These disadvantages can include;

- having to leave qualified plan benefits to a surviving spouse who will not sign a waiver associated therewith,
- having alimony and property settlement rights vest in a new spouse if the new spouse will not sign a binding prenuptial agreement as requested by the other spouse,
- having to have the new spouse on the healthcare plan of an employed spouse whose employer requires this,
- having to inform an employer that a same sex marriage exists in order to comply with personnel, office and associated requirements (which may occur in states that do not prevent discrimination against gays and lesbians, such as Florida. However many cities and counties in Florida have enacted ordinances prohibiting sexual orientation discrimination in the workplace),
- income tax "marriage penalty" if both spouses have significant income
- having to decide who to invite to the ceremony and who is going to pay for it or,
- whether to go to Justice Ginsberg's house since she will probably not charge because it would have to be disclosed on her income disclosure form.

One example of a tax disadvantage is Pennsylvania's inheritance tax. A same sex couple married in Connecticut, but their marriage was not recognized in Pennsylvania, the state they lived in. When one spouse died, the other was subject to Pennsylvania's inheritance tax because their

⁶ Dennis I. Belcher and George D. Karibjanian, "Doma: Dead or Alive?", ACTEC 2013 Fall Meeting Musings (November 2013).

marriage was not recognized in Pennsylvania. The surviving spouse filed a petition on October 25, 2013.

Advisors who represent one or more members of an affluent same sex couple will need to reach out to let them know that if and when they are married they can have a new estate tax plan that includes marital deduction planning, Qualified Terminable Interest Property trust planning, and associated rights and responsibilities.

Medicaid

Many elderly Americans rely on Medicaid to pay for nursing home care after their limited Medicare benefits run out. When one spouse needs to have Medicaid nursing home benefits and the other spouse has assets, the assets have to be spent down, in many cases, before Medicaid will apply. The spouse whose assets have to be spent down even though he or she does not need nursing home care is called the “community spouse.” Individuals who are concerned about Medicaid eligibility want to think about this and possibly purchase long term care insurance to make this issue less of a factor.

Liability for Medical and Other Expenses of a Spouse

Some states require one spouse to be responsible for medical and other liabilities incurred by the other spouse. Other states, including Florida, do not have this requirement, unless there has been an explicit guarantee signed. This is another factor that many same sex couples will consider in determining whether to marry.

The Family and Medical Leave Act and COBRA

According to the Family and Medical Leave Act an employee is allowed to take up to 12 weeks of unpaid leave in a 12-month period for various reasons. One of these reasons is to help care of an ailing, sick spouse. Under DOMA, same sex couples were unable to take advantage of this protection.⁷ However, since the fall of DOMA, same sex couples that are domiciled in states that recognize same sex marriage will be protected under the Family Leave Act if they take leave to care for their ailing spouse.⁸ It is important to inform same sex couples that, at this time, the Department of Labor looks at the spouses place of *domicile* to consider eligibility.

Furthermore, the Consolidated Omnibus Budget Reconciliation Act (“COBRA”) mandates that health care must continue even after there is an event of termination of coverage, such as termination of employment. During DOMA, if an individual in a same sex marriage lost his or her job their spouse would not be afforded coverage under COBRA, even if the spouse was already on your health care policy. However, now Federal COBRA coverage is now required to be available to same sex spouses.

⁷ Rachel Wisdom, *LGBT Litigator* (American Bar Association, Sept. 12, 2013) (copy of transcript on file with *Gassman and Associates*).

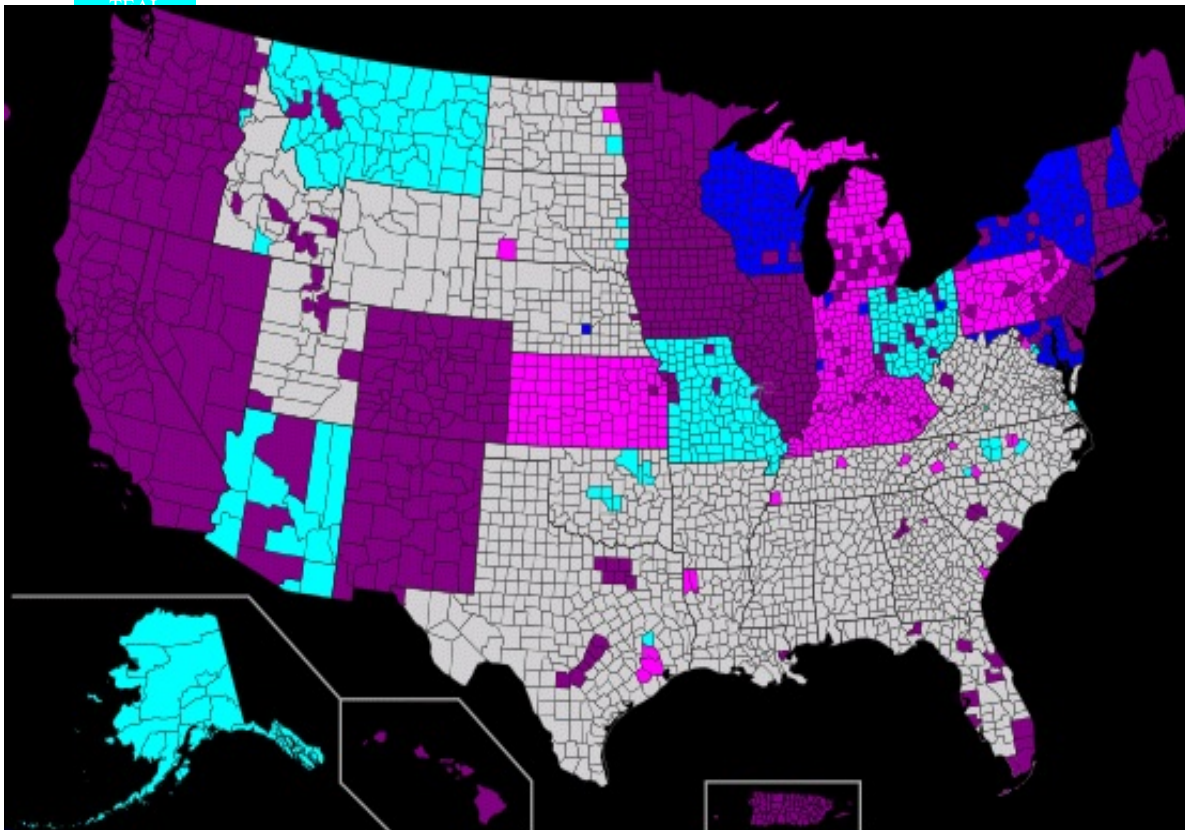
⁸ *Id.*

US Counties and Cities with Sexual Orientation and Gender Identity Protection - 2013

State, county, or city protects sexual orientation and gender identity with anti–employment discrimination ordinance

BLUE

State, county, or city protects sexual orientation with anti–employment discrimination ordinance



State, county, or city protects sexual orientation and gender identity solely in public employment

GRAY

State, county, or city protects sexual orientation in public employment⁹

Sexual Orientation and Gender Identity Protection in the Workplace

Protection of gay clients in the workplace due to sexual orientation is also an issue to consider when counseling same sex couples.

Federal law protects federal employees from discrimination due to sexual orientation, but

⁹http://en.wikipedia.org/wiki/File:US_counties_and_cities_with_sexual_orientation_and_gender_identity_protection.svg

they have not yet successfully passed a law that outlaws discrimination based on sexual orientation in private workplaces. Thus, state law continues to govern in this particular area.

However, this may all change after the Senate votes on the Employment Non-Discrimination Act later this year. If passed, this bill will provide comprehensive protections against employment discrimination on the basis of sexual orientation and gender identity to lesbian, gay, bisexual, or transgender (“LGBT”) workers in all 50 states!

While twenty-one (21) states have banned sexual orientation discrimination in the workplace, many states have failed to follow this growing trend. However, many of the cities and counties in states that don’t provide sexual orientation protection have enacted local ordinances that prohibit sexual orientation discrimination in private workplaces. This is illustrated in the chart above. These jurisdictional ordinances vary as to degree of protection, i.e. not all permit workers to file private lawsuits against employers and some only regulate workplaces having more than a certain minimum number of employees. Thus, it is important to specifically look at the specific jurisdiction’s degree of protection when filing a suit for workplace discrimination.

Divorce and Domestic Partnership Agreements

When a same sex couple that is validly married in another state lives in a non-friendly state, it is useful to have them consider a domestic partnership agreement (“DPA”). In some states, if a same sex married couple lives in a state that does not recognize their marriage, they are not provided the option of obtaining a divorce. Furthermore, parties may be unable to obtain a divorce in a state that they were married in if they have not been domiciled there for a specific period of time.¹⁰ Thus, if the partners have a disagreement of how to split up the marital assets the court will have no available remedy.

However, if a couple has a DPA, the contract between the partners may provide a court a way to divide up the marital assets and even create support rights between partners. A DPA, in a way, works like a prenuptial agreement.¹¹ Keep in mind that there is no guarantee that a court in a state hostile to same sex marriage will uphold same sex domestic partnership agreements, but it does not hurt to draft one as a safety net.

When drafting a domestic partnership agreement consider terms such as parking, storage, payment of utility bills, dividing costs, who will do the shopping, cleaning, and cook, as well as privacy, security, laundry, furniture, and pets. Frank S. Berall, “Estate Planning In Light of *Windsor* and *Perry* Cases”, Estate Planning, Vol 40, No 11, 26 (November 2013).

¹⁰ Delaware, the District of Columbia, and Vermont allow divorces in their state without a residency requirement for same sex couples married in their jurisdiction. Dennis I. Belcher and George D. Karibjanian, “Doma: Dead or Alive?”, ACTEC 2013 Fall Meeting Musings (November 2013).

¹¹George D. Karibjanian, *Estate Planning for Same-Sex Partners*, 86-JUN Fla. B.J. 91, 95 (June 2012).

This divorce prohibition in certain states could change in the not too distant future, and, if so, alimony and property settlement rights might date back to when the couple was originally married, as opposed to dating back to when the state legislature and governor might sign such legislation into existence.

Powers of Attorney

Furthermore, same sex couples should carry Powers of Attorney just in case the state they are domiciled in does not recognize their marriage. Since a Power of Attorney is contractual in nature and not dependent on relationship status, a gay individual can appoint their partner to make financial and medical decisions for them in case of incapacity.

Any hospital receiving federal funding, including Medicare or Medicaid, is required to honor any valid Powers of Attorney, even if it is between same sex partners.¹² This includes majority, if not all, of the hospitals in the United States. The memorandum was the result of a Florida lawsuit, *Langbehn v. Jackson Memorial Hospital*, in which the hospital refused to acknowledge the Plaintiff's valid Health Care Power of Attorney over her dying lesbian partner.

Thus, even if validly married in another state, it is important for your client to continue to carry durable power of attorney in their spouse's name to avoid any interstate discrepancies.

Planning for Same Sex Couple's Children

When planning for same sex couple's children, more things need to be considered than just establishing a will and trust.

For instance, it is also important to consider that in all 50 states, same sex parents who are not the birth parent MUST obtain second-parent adoptions for their children to be legally recognized as a legal parent.¹³ Neither a marriage license of the parents' nuptials nor a birth certificate signed by the non-biological parent are enough to give a same sex partner parental rights to their child. *Id.* Thus, a court order of adoption is required.¹⁴

This was the major issue of the Ohio Supreme Court case *In re Mullen*. Kelly Mullen and Michelle Hobbs wanted to have a child.¹⁵ Mullen contacted a male friend to be a sperm donor (he signed away any legal rights to the baby), and she gave birth in July 2005.¹⁶ However, the couple

¹² President Barack Obama, *Presidential Memorandum - Hospital Visitation* (April 15, 2010) (a v a i l a b l e a t <http://www.whitehouse.gov/the-press-office/presidential-memorandum-hospital-visitation>).

¹³ Dan Ebner, Roundtable, *LGBT Litigator* (American Bar Association, Sept. 12, 2013) (copy of transcript on file with *Gassman and Associates*).

¹⁴ *Id.*

¹⁵ *In re Mullen*, 953 N.E.2d 302, 304 (Ohio 2011).

¹⁶ *Id.*

began having problems and Mullen moved out with their child.¹⁷ Hobbs filed an action to obtain visitation rights, but the Ohio Supreme Court ruled that Hobbs had no rights due to the fact that “Mullen did not create an agreement to permanently relinquish sole legal custody of her child in favor of shared legal custody with Hobbs.”¹⁸

However, an issue arises in states that do not allow for second-parent adoption. In these states, same sex parents should execute a co-parenting or joint custody agreement to ensure custody if a dispute arises. It is not certain that these agreements will be upheld in every state’s court. However, having same sex parents draft and sign these agreements help prove intent during a custody dispute. In “Estate Planning for Children of Same-Sex Couples,” Joan Burda encourages planners to stray away from using “joint parenting agreement” and rather title the agreement “joint custody agreement.”¹⁹ Furthermore, when drafting wills or trusts be careful when using the word “parent” because sometimes this can be construed to mean biological parent.²⁰

Some factors to address in a co-parenting or joint custody agreement are:

- Who will the child live with?
- Who will make major decisions, such as health care and schooling, for the child?
- Will the child spend part of the week (month or year) living with one parent and live part with another? Will both parents share in making major decisions?
- How will both parents provide for their child's medical and educational needs?
- In what religion, if any, will the child to be raised?
- What financial, familial, or other resources will each parent offer?
- How each parent resolve disputes?
- What each parent will do if either parent moves?
- What will be done if one of the parents violates the agreement?²¹

Social Security Benefits and Taxation

We are hopeful that the Social Security Administration (“SSA”) will announce this year that same sex couples who had marriage ceremonies and registration in states that recognize same sex marriage will be treated as married for social security tax purposes, but that is not always good.

¹⁷ *Id.*

¹⁸ *Id.* at 309.

¹⁹ Joan Burda, *Estate Planning for Children of Same-Sex Couples*, Vol. 3, No.2 http://www.americanbar.org/publications/gpsolo_ereport/2013/september_2013/estate_planning_for_children_of_same-sex_couples.html (September 2013).

²⁰ *Id.*

²¹ Human Rights Campaign, *Second Parent Adoption*, <http://www.hrc.org/resources/entry/second-parent-adoption> (accessed Oct. 1, 2013).

While Medicare and the IRS officials are using the “place of celebration” standard to determine if a same sex couple is eligible for benefits, the SSA is using a “place of residence” standard in determining spousal benefits. This means that for Medicare and IRS determinations as long as the couple is legally married, it doesn’t matter where they may live, but for SSA benefits a same sex married couple living in a non-recognition state will not receive benefits as a couple. For example, a same sex couple in Florida may not receive the same social security benefits as a same sex couple in Massachusetts until final determinations are made by the SSA.

However, the SSA is working on fixing this “kink”, and there is an expectation that this will be resolved soon to ensure uniformity throughout the states. Once the Social Security Administration resolves this issue, same sex couples will be offered more financial benefit options for their spouse and family, such as surviving spouse’s benefits after their spouse dies.

The SSA has started processing spousal claims for same sex couples. They encourage same sex couples to start applying right away, even if they are not eligible, for it will preserve the filing date used when determining the start of benefits.

It is important to note to clients that entering into a same-sex marriage may cause a loss of or a lowering of their existing social security income (“SSI”) benefits. Marriage can not only effect eligibility for SSI, but benefits can change from an individual rate to a couple rate and social security income is taxed differently. However, marriage will not effect retirement or social security disability insurance (“SSDI”) benefits.

Social security income may be taxable, depending upon the amount of other income a same sex couple receives. If a taxpayer only receives social security income or railroad retirement benefits, the benefits are generally not taxable and the taxpayer may not need to file a federal income tax return.

Our draft language with respect to social security benefits and taxation that will be adapted once we know where the SSA is heading is as follows:

If a taxpayer receives income in addition to social security income, and one half of the social security benefits plus other income exceeds a "base amount," then up to 85% of the social security income can be taxable. The 2012 base amount for single filers is \$25,000 and for married taxpayers filing a joint return is \$32,000.

There is a complicated sliding scale formula under Code § 86 to determine how much of social security benefits are taxable. Generally, gross income includes 50% of social security benefits but no more than 85% depending upon the amount of other income a taxpayer receives during the year. IRS Publication 915 contains a Worksheet that is helpful in determining the amount of social security income that is subject to income tax.

Example:

John and Sam, a same sex married couple, receive annual social security income of \$10,000 each,

for a total of \$20,000. John also receives taxable pension income of \$8,000. None of the social security income is taxable because their income of \$28,000 is less than the \$32,000 base amount that applies for married joint filers.

If John receives taxable pension income totaling \$25,000 then \$1,500 of their Social Security income will be taxable. If John receives taxable pension income totaling \$50,000 then 85% of their Social Security income will be taxable.

Social Security income is included in the calculation of Modified Adjusted Gross Income for purposes of calculating the Medicare contribution tax. Therefore, taxpayers having significant net investment income will have more reason to defer Social Security benefits.

Assuming a reasonable or long life expectancy, it is generally beneficial for an individual who is eligible to receive Social Security on or after age 62, to delay receipt of payments until he or she reaches full retirement age. If an individual's full retirement age is 65 and he or she elects to receive Social Security benefits at age 62, the benefit amount is reduced by 20%. The reduced benefit amount decreases to 13.3% at age 63 and 6.66% at age 64. The reduction takes into account that a person is receiving benefits over a long period of time. Therefore, an individual can either receive lower monthly amounts over a longer period of time or receive higher monthly amounts over a shorter period of time.

If an individual delays receiving Social Security benefits after full retirement age, he or she may be eligible for a delayed retirement credit. The following chart, available at <http://www.ssa.gov/retire2/delayret.htm>, shows the percentage increases when an individual delays receipt of retirement benefits.

Increase for Delayed Retirement		
Year of Birth	Yearly Rate of Increase	Monthly Rate of Increase
1933-1934	5.5%	11/24 of 1%
1935-1936	6.0%	1/2 of 1%
1937-1938	6.5%	13/24 of 1%
1939-1940	7.0%	7/12 of 1%
1941-1942	7.5%	5/8 of 1%
1943 or later	8.0%	2/3 of 1%

The chart below, available at http://www.ssa.gov/OACT/ProgData/ar_drc.html, demonstrates the advantages of delaying Social Security benefits. The "Primary Insurance Amount" is the amount an individual would receive at his or her normal retirement age. As the chart shows, a person born between 1943-1954, whose normal retirement age is 66 can receive a 32% increase in benefits by delaying receipt of benefits until they reach age 70. Further information on this topic can be found on Social Security Administration website, www.ssa.gov.

Year of Birth	Normal Retirement Age	Credit for each year of delayed retirement after NRA (percent)	Benefit, as a percentage of PIA, beginning at age						
			62	63	64	65	66	67	70
1924	65	3	80	86 ² / ₃	93 ¹ / ₃	100	103	106	115
1925-26	65	3 ¹ / ₂	80	86 ² / ₃	93 ¹ / ₃	100	103 ¹ / ₂	107	117 ¹ / ₂
1927-28	65	4	80	86 ² / ₃	93 ¹ / ₃	100	104	108	120
1929-30	65	4 ¹ / ₂	80	86 ² / ₃	93 ¹ / ₃	100	104 ¹ / ₂	109	122 ¹ / ₂
1931-32	65	5	80	86 ² / ₃	93 ¹ / ₃	100	105	110	125
1933-34	65	5 ¹ / ₂	80	86 ² / ₃	93 ¹ / ₃	100	105 ¹ / ₂	111	127 ¹ / ₂
1935-36	65	6	80	86 ² / ₃	93 ¹ / ₃	100	106	112	130
1937	65	6 ¹ / ₂	80	86 ² / ₃	93 ¹ / ₃	100	106 ¹ / ₂	113	132 ¹ / ₂
1938	65, 2 mo.	6 ¹ / ₂	79 ¹ / ₆	85 ⁵ / ₆	92 ² / ₆	98 ⁵ / ₆	105 ⁵ / ₁₂	111 ¹¹ / ₁₂	131 ⁵ / ₁₂
1939	65, 4 mo.	7	78 ¹ / ₃	84 ⁴ / ₆	91 ¹ / ₆	97 ¹ / ₆	104 ² / ₃	111 ² / ₃	132 ² / ₃
1940	65, 6 mo.	7	77 ¹ / ₂	83 ¹ / ₃	90	96 ² / ₃	103 ¹ / ₂	110 ¹ / ₂	131 ¹ / ₂
1941	65, 8 mo.	7 ¹ / ₂	76 ² / ₃	82 ² / ₆	88 ⁵ / ₆	95 ⁵ / ₆	102 ¹ / ₂	110	132 ¹ / ₂
1942	65, 10 mo.	7 ¹ / ₂	75 ⁵ / ₆	81 ¹ / ₆	87 ⁷ / ₆	94 ⁴ / ₆	101 ¹ / ₄	108 ³ / ₄	131 ¹ / ₄
1943-54	66	8	75	80	86 ² / ₃	93 ¹ / ₃	100	108	132
1955	66, 2 mo.	8	74 ¹ / ₆	79 ¹ / ₆	85 ⁵ / ₆	92 ² / ₆	98 ⁵ / ₆	106 ² / ₃	130 ² / ₃
1956	66, 4 mo.	8	73 ¹ / ₃	78 ¹ / ₃	84 ⁴ / ₆	91 ¹ / ₆	97 ⁷ / ₆	105 ¹ / ₃	129 ¹ / ₃
1957	66, 6 mo.	8	72 ¹ / ₂	77 ¹ / ₂	83 ¹ / ₃	90	96 ² / ₃	104	128
1958	66, 8 mo.	8	71 ² / ₃	76 ² / ₃	82 ² / ₆	88 ⁵ / ₆	95 ⁵ / ₆	102 ² / ₃	126 ² / ₃
1959	66, 10 mo.	8	70 ⁵ / ₆	75 ⁵ / ₆	81 ¹ / ₆	87 ⁷ / ₆	94 ⁴ / ₆	101 ¹ / ₃	125 ¹ / ₃
1960 and later	67	8	70	75	80	86 ² / ₃	93 ¹ / ₃	100	124

A spouse can also elect to receive one-half of his or her spouse's benefit if they start receiving benefits at their full retirement age. A spouse who is eligible for a spousal benefit and his or her own benefit, can elect to take the spousal benefit and delay receiving his or her own benefit. This may result in a higher benefit due to the delayed retirement credits.

PLANNING TIP

Defer receiving Social Security benefits until reaching full retirement age. This increases the monthly benefit amount and also minimizes the Medicare 3.8% contribution tax because Social Security benefits are included in the calculation of Modified Adjusted Gross Income for purposes of the 3.8% tax calculation.

Legal Practice Etiquette

Socially Acceptable Terminology For Same Sex Couple Conversations	NOT Socially Acceptable Terminology for Same Sex Couple Conversations
“Partner” ²²	“Husband” or “Wife”
“Special Rights”	“Equal Rights”
“Gay” or “Lesbian”	“Homosexual”
“Relationship” or “Couple”	“Homosexual Couple”
“Sexual Orientation”	“Sexual Preference”

With the prospect of more same sex couples, advisors will also want to be wary of proper etiquette. According to the GLAAD Media Reference Guide which advises journalists on using appropriate terms, preferred terms include “gay,” “gay man,” “lesbian,” or “gay person/people” rather than “homosexual.” In addition, “sexual orientation” or “orientation” is preferred, while “sexual preference” is considered offensive.

Steven Petrow, a New York Times contributor addressing questions on gay and straight etiquette, suggests that the most practical approach is to listen to how a couple introduces themselves or refers to each other, since this will vary from couple to couple. This is an important matter to consider, and advisors should be careful to avoid “downgrading” a couple’s status. As Petrow explains, “[w]ith all the work that it took for [same sex couples] to make their relationship legal in New York, my pal was not about to settle for ‘friend’ to describe the man he’s been partnered with for nearly three decades.” When in doubt, Petrow advises that you should not be shy to ask the couple directly how they would like to be referred to. “It’s not a nosy question—it’s a respectful one,” he says.

Other Considerations

Also consider some advantages and disadvantages of marriage shown below.

Advantages of Marriage	Disadvantages of Marriage
<ul style="list-style-type: none"> • Savings with sharing a single health insurance plan: While the rules vary by state and employer, many health insurance companies already offer benefits to domestic partners and 	<ul style="list-style-type: none"> • Responsibility of health care: Depending on which state you live in, if your spouse cannot pay their health care bills, then you may be held liable for the cost.

²² Steven Petrow, *Is it Gay Husband? Lesbian Wife? Or What?*, New York Times (November 27, 2012).

<p>same-sex unions; others require marriage for shared coverage.</p>	
<ul style="list-style-type: none"> • Security benefits go to the surviving spouse: Widowed spouses are entitled to their spouses' Social Security benefits if they are greater than their own. 	<ul style="list-style-type: none"> • Loss of benefits if you get remarried: If you are a widow or widower receiving a deceased spouse's retirement benefits or social security benefits you may lose those benefits if you get remarried before the age of 60.
<ul style="list-style-type: none"> • No Employer Taxes: If you work for your spouse, they do not have to pay social security taxes or unemployment taxes on your behalf.. 	<ul style="list-style-type: none"> • Spousal debt responsibility: In community property states, most debt incurred by either spouse during marriage are owed jointly by the couple, even if only one spouse signed for the debt.
<ul style="list-style-type: none"> • "Being Married" - Dr. Phil 	<ul style="list-style-type: none"> • "Being Married" - Rodney Dangerfield

While Post-DOMA America is still not providing same sex couples with complete equality, the federal and state governments are working tirelessly to achieve this goal. One thing is for certain: as the landscape continues to grow more inclusive, lawyers can anticipate a wide array of new considerations and techniques for same sex couples.

Conclusion

There is a tremendous opportunity for financial tax and legal advisors to help same sex couples to decide whether to marry, where to live, and how to handle their estate planning, creditor protection planning, tax planning, and other situations.

This will take a great deal of study and consideration, and will not be an "one size fits all" analysis. The biggest social adjustment in our country so far this century is an exciting time for those of us in the counseling professions.

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